IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2388 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

GOVERNMENT CENTRAL PRESS CLERICAL STAFF

Appearance:

1. Special Civil Application No. 2388 of 2001

MR HC PATEL ASST GOVT PLEADER for Petitioner No. 1

MR TR MISHRA for Respondent No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 17/01/2002

ORAL JUDGEMENT

#. Heard Mr.H.C.Patel, learned AGP appearing on behalf of the petitioner and Mr.T.R.Mishra, learned advocate appearing on behalf of the respondents workmen.

#. In the present petition, the petitioner - State of Gujarat has challenged the award passed by the Industrial Tribunal [Gujarat] in Reference [IT] No.92/1999 dated 20th November, 2000. Initially, this Court has issued notice and thereafter, RULE has been issued on 19th July, 2001 and interim relief in terms of para-6[C] has been granted by this Court.

#. Learned advocate Mr.H.C.Patel appearing on behalf of the petitioner has raised contention that the respondent Union has raised industrial dispute in the year 1999 claiming benefit with retrospective effect of overtime to the employee those who are working in the Press and they are governed by the Provisions of the B.C.S.R. and as per the provisions of B.C.S.R, whatever wages and other benefits that are available to the employees concerned are paid to the clerical staff. It is also submitted that vide Resolution dated 30th September, 1991, there are two zones, of which, one is industrial and the another is non industrial and the concerned employees initially filed an application under the Payment of Wages Act being Application No.386 / 1986 and thereafter said application was withdrawn by the employees. Therefore, the present demand of the respondent union is illegal. It is also submitted that working hours of the clerical staff from Monday to Friday is 10.30 a.m. to 5.30 p.m. and they require to work on Saturday from 10.30 a.m. to 2.00 p.m. but thereafter, their working hours have been increased from 10.30 a.m. to 6.10 p.m. and second and forth Saturdays they are given full day holiday. That they enjoy 30 minutes recess, so that in all they require to work for 36 hours in a week but these working hours may extend upto 48 hours in a week but as such, no payment is made for overtime work upto 48 hours in a week. It is also pointed out that no such order issued to pay overtime wages to the clerical staff and by Government Circular dated 7th June, 1995, the administrative staff is not included for entitlement of the overtime wages. Therefore, the contention which was raised by the respondent workmen is not reasonable and the same would be in contravention of provisions of B.C.S.R. Act. It is also submitted that the Industrial Court has committed error in coming to the conclusion that concerned clerical staff is entitled to overtime wages. It is also contended that the reasons given by the tribunal in support of its conclusion are not based upon the record and therefore, the award passed by the Industrial Court requires to be quashed and set aside.

#. Learned advocate Mr.T.R.Mishra appearing on behalf of

the respondents workmen has submitted that before the Tribunal, oral as well as documentary evidence were produced by the respective parties and after considering the oral and documentary evidence, the tribunal has come to the conclusion that concerned clerical staff is also entitled to over time wage if they require to work more than 42 hours and in that case, the respondent workmen will be entitled to overtime wages for six hours per week for 42 hours to 48 hours. Mr.Mishra, learned advocate has submitted that even clerical staff also entitled to overtime wage on double rate if they require to work for more than 48 hours. The petitioners are paying the overtime wages to clerical staff also, if they require to work more than 48 hours in a week. Therefore, learned advocate Mr.Mishra has also submitted that the finding recorded by the tribunal on the basis of the oral evidence and documentary evidence and also considering the provisions of the Factories Act, therefore, no error has been committed by the tribunal while granting benefits for which the concerned employees are entitled to overtime wages if they require to work more than 42 hours to 48 hours in a week.

#. I have considered the submissions made by the learned advocates for the parties. Relevant finding of the tribunal in para-2, wherein it is observed that the Supervisory and Technical staff are getting overtime wages on single rate if the required to work more than 42 - 48 hours in a week but only clerical staff has been excluded for granting the benefit of overtime wages. The Tribunal has also considered that the technical supervisors as also the clerical staff also getting overtime wages on double rate if they require to work more than 48 hours. Therefore, the tribunal has come to the conclusion that provisions of the Factories Act are applicable to the petitioner members. If according to the provisions of Factories Act, if overtime wage is required to be paid at double rate if the employee is required to work more than 48 hours in a week, then, why the employees are not entitled over time wages on double rate if they require to work for more than 42 hours but less than 48 hours in a week. On this controversy, the petitioner press was not able to point out any provision and / or circular of the Government. However, the petitioner Press has relied upon one circular dated 30th September, 1991, wherein two zones have been created by the petitioner Press, one is industrial and another is non industrial zone. Therefore, except this defence, the petitioner Pres is not having any defence for not paying overtime wage to the concerned employees if they require to work more than 42 hours upto 48 hours. Therefore,

ultimately the tribunal has come to the conclusion that if the Clerical staff which is working in the Factory and when they are working under the Factories Act, in that case, obviously, the provisions of the Factories Act are applicable to such employees. The tribunal has also considered one more aspect that clerical staff are also getting overtime wage at the double rate if they require to work more than 48 hours. This aspect is undisputed between the parties. But denial of paying overtime for limited hours to the clerical staff if they require to work for more than 42 hours upto 48 hours in a week, otherwise, the clerical staff are getting overtime wages if they require to work more than 48 hours in a week. Therefore, this tribunal has found that this is clear discrimination between two class of staff pattern in respect of the staff working and governed under the Factories Act. Therefore, the tribunal has come to the conclusion that such two divisions in staff, one is industrial and non industrial but as such, there are no such division under the Factories Act. Moreover, the workers working in the factories, are directly governed by the Factories Act and therefore, they are employees of the Factory. Therefore, the tribunal has observed that in respect of the said Resolution that clerical staff is not entitled to overtime but in fact, the reality the petitioner Press is paying overtime wages to clerical staff also if they require to work more than 48 hours. Therefore, considering all these aspects of the matter, the tribunal has held that concerned clerical staff employees are also entitled to overtime wages at single rate if they require to work for more than 48 hours. Therefore, considering all these aspects of the matter, the tribunal has held that concerned clerical staff employees are also entitled to overtime wages at a single rate if they required to work more than 42 hours upto 48 hours in a week.

#. In respect of retrospective effect which has been granted by the tribunal, the tribunal has considered this aspect in detail in para-13. The tribunal has also considered the objection raised by the petitioner Press that the demand of the respondent Union with effect from 1985, raised the dispute in 1999. Therefore, no retrospective effect is given to the demand of the respondent Union. This aspect has been taken into account by the tribunal and the tribunal has come to the conclusion that charter of demand was raised by the respondent union on 5th August, 1991 and thereafter, conciliation proceedings were held and ultimately the Reference has been made in the year 1999. The tribunal has also observed one more important aspect while

granting the benefits with effect from 1st January, 1991 that the demand was raised by the Union in respect of the clerical staff. Moreover, the officers those who were representing the case of the petitioner Press before the Tribunal had specifically admitted that demand which was raised by the respondent union can be said to be just, proper and reasonable. This admission from the officer has been recorded by the tribunal in detailed in para-13. Therefore, considering all the aspects and also fact that the tribunal is having jurisdiction to grant benefit with retrospective effect, the tribunal has passed the award granting the benefits to the Clerical Staff if they require to work more than 42 hours upto 48 hours at the single rate over time wage with effect from 1st January, 1991.

#. This Court has perused the entire award and also considered the finding given by the tribunal. The main contention which was raised by the petitioner is that there are two zones, of which, one is industrial and another is non industrial. Clerical staff is covered under non industrial and therefore, they are not entitled to overtime wage. However, if this is real difficulty, then the undisputed fact before the tribunal that the clerical staff are getting overtime wage if they required to work for more than 48 hours. This fact has not been disputed by the petitioner Press before the Tribunal. However this Court fails to understand the ratio that if the clerical staff though they are defined and covered under the non industrial zone, in that case, they should not be entitled to any overtime wages even if they required to work more than 48 hours in a week. But on the contrary, the undisputed fact remains that the clerical staff is given overtime at the double rate if they are required to work beyond 48 hours in a week. But merely the benefits which are available to the Supervisory and technical staff to have the over time wage at the single rate which is not given to the clerical staff. Therefore, this discriminatory aspect has been rightly considered by the tribunal on the basis of the documentary and oral evidence on record before the tribunal. Furthermore, clear admission of the officer who were representing the case of the petitioner Press before the Tribunal that the demand which was raised by the clerical staff is reasonable and proper. Therefore, the tribunal has also rightly considered to grant such benefits with retrospective effect after considering the date of demand, conciliation date and the date of Reference. Therefore, according to my opinion, the tribunal has not committed any error while passing the impugned award. Learned AGP Mr.H.C.Patel has failed to

point out any jurisdictional error committed by the tribunal while passing the said award.

#. Moreover, this Court has very limited jurisdiction while examining the legality and validity of the award passed by the labour and / or the tribunal under Article 226 and 227 of the Constitution of India. However, it is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANDKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not. In such circumstances, only High Court cannot interfere with the award passed by the tribunal.

#. Considering the observations of the lower court made in para-2 and considering the award in question, according to my opinion, the tribunal had jurisdiction under the provisions of the Industrial Disputes Act, 1947 to pass such award to adjudicate the demand raised by the respondent Union. Similarly, the tribunal is very well empowered to grant such benefits with retrospective effect as has been extended in the impugned award. Therefore, considering all the aspects of the matter, according to my opinion, the tribunal has not committed any error while passing the award impugned or as such, there is no jurisdictional error or no procedural irregularity committed by the tribunal and therefore, no interference of this Court under Article 226 and 227 of the Constitution of India, is called for. Therefore, there is no substance in the petition and therefore, present petition is dismissed accordingly. Rule

discharged. Ad-interim relief, if granted by this Court, stands vacated. No order as to costs.

Date : 17-1-2002 [H.K.Rathod, J.]

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